IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.Rev.Pet.No. 2456 of 2007()

CRA.14/2004 of ADDL.SESSIONS COURT-III, KOZHIKODE
ST.3183/2001 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

P.SURESH KUMAR, S/O GOPALAN NAIR,
AGED 40 YEARS, STALL NO.88, N.V.M.MARKETY,
PALAYAM, CALICUT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

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1. M.K.RAJAN, S/O RAMAN, AGED 69 YEARS,
MAMMANKANDY HOUSE, P.O.ARAKKINAR, KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2456 OF 2007

Dated this the 21st day of June, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C., the revision petitioner who was the accused in S.T. No.3183/2001 on the file of the JFCM-V, Kozhikode, challenges the conviction entered and the sentence passed against him concurrently by the courts below for an offence punishable under section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected

the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. I am, however, inclined to modify the sentence imposed on the appellant provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant or his legal heirs by way of compensation under section 357(3) Cr.P.C. a sum of Rs.60,000/- (Rupees sixty thousand only) (less the amount, if any, already remitted) within three months from today, then he need to undergo imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, the sentence imposed on him by the courts below shall revive.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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